

## **II. Remarks / Arguments**

These remarks are submitted in response to the Office Action of October 5, 2006 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. As a result of this amendment Claims 1, 10 and 18 have been amended. New Claims 19 – 20 have been added. Claims 1 – 20 remain in the application.

In paragraph 2, the Examiner requested the spelling out of abbreviations such as DAV and FDI. Please note that DAV is found in paragraph [0018] for "Direct Access Volume" and FDI is found in paragraph [0019] for "FlashH Data Integrator".

In paragraph 4, page 2, of the Office Action, Claims 1-2, 5-6 and 8-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0073497 to Nelson. In paragraph 7, page 4, of the Office Action, Claims 3-4, 7, and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0073497 to Nelson.

## **III. Applicants' Invention**

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the references cited in the Office Action. One embodiment of the invention, as typified by independent Claim 1, is a method of reallocating memory in a portable communication device comprising the steps of receiving a signal over the air indicating a reallocation of non-removable memory in the portable communication device and reallocating the non-removable memory in accordance with the signal.

## **IV. The Claims Define Over the Prior Art**

Nelson discusses the use of non-volatile RAM or NV-RAM in a gaming machine such as a casino gambling device to . Such a gaming device is not portable. The specific embodiments mentioned the use of keypads, touch pads, card readers or other means of a hardwired interface to the gaming device. The gaming device is never referred to as a portable communication device nor is there any suggestion or contemplation that the gaming device itself is in any way portable. In passing, Nelson does mention that the transmission

(of the gaming code) can be done by either wireless or wireline communication to the gaming device. Nelson further fails to teach, suggest, mention or contemplate the sending of a signal over-the-air that indicates the re-allocation of non-removable memory and further where the non-removable memory is reallocated in accordance with the over-the-air signal. Instead, Nelson is concerned with not overwriting "critical data" and in this regard Nelson uses a NV-RAM manager software that manages the non-volatile memory. Any over the air signal sent to the gaming device of Nelson would be gaming code and not an over the air signal for re-allocation of memory.

With respect to claim 14, it should further be noted that a workstation or server or remote computing device as referred to in paragraph [0037] of Nelson does not equate to a base transmitter as claimed. A base station in the context of the present invention is more akin to cellular base station or other wireless base station where multi-channel two-way radios are used in a fixed location. A workstation or server or remote computing device as discussed in Nelson does not transmit a signal over the air, let alone a signal that indicates and causes the reallocation of non-removable memory. Furthermore, Nelson refers to a laptop, PDA, or handheld in the context of transferring the gaming code to the gaming machine. Again, these devices are not wireless base transmitters and laptops and PDAs fail to equate to a portable communication device as recited in claim 14.

With respect to claims 2, 8, 11 and 15, Nelson further fails to specifically mention the use of Java heaps. Java applications or applets are used in portable wireless devices and there fails to be any suggestion, mention or contemplation of using Java or Java Heaps in the gaming device of Nelson. In fact, Nelson contemplates using applications such as word processors such as Word Perfect by Correl or Word by Microsoft (see paragraph [0038] of Nelson).

The Examiner has failed to give any significance to a "Java Heap" as opposed to a traditional memory heap. A Java Heap has a specific significance with respect to Java and a Java virtual machine. More specifically, a Java virtual machine has a *heap* that is shared among all Java virtual machine threads. The Java heap is the runtime data area from which memory for all class instances and arrays is allocated.

The heap is created on virtual machine start-up. Heap storage for objects is reclaimed by an automatic storage management system (known as a *garbage collector*); objects are never explicitly deallocated. The Java virtual machine assumes no particular type of automatic storage management system, and the storage management technique may be chosen according to the implementor's system requirements. The heap may be of a fixed size or may be expanded as required by the computation and may be contracted if a larger heap becomes unnecessary. The memory for the heap does not need to be contiguous.

A Java virtual machine implementation may provide the programmer or the user control over the initial size of the heap, as well as, if the heap can be dynamically expanded or contracted, control over the maximum and minimum heap size. The following exceptional condition is associated with the heap: If a computation requires more heap than can be made available by the automatic storage management system, the Java virtual machine throws an `OutOfMemoryError`.

The Applicant further objects to or traverses the Examiner's conclusory OFFICIAL NOTICE that it would have been obvious to require a larger java heap than the java heap initially shipped in order to be able to run updated applications downloaded to the portable communication device. As the Applicant explained in the background of the invention, RAM is typically only available in sizes that double in the same package footprint, so often the only option is to double the amount of RAM when only a little more memory is actually needed (e.g. using a 2 Megabyte chip when only a little more than 1 Megabyte of RAM is actually needed). Often, the next release of software must have new features that are required to fit in the same part due to cost constraints (e.g., providing a new browser feature in a subsequent release without increasing cost and remaining within a certain hardware price point.) This can mean that the platform must "reserve" room to fit the new feature and must decrease the size of other features available RAM in order not to be perceived to have "degraded" in an upgraded model. (e.g. a new Browser needs 512k of RAM so a Java Heap space needs to be decreased by 400k to insure it will fit in the new release). In such a scenario, a current product would ship with unused RAM which is a waste of valuable resources.

The Examiner has failed to present a prima facie case of obviousness since the Examiner has failed to show a portable communication device that includes a Java Heap, and more particularly a portable communication device that received an over-the-air signal indicating a reallocation of non-removable memory and where the memory is reallocated in accordance with the over-the-air signal. Furthermore, the same can be said with respect to the Examiner's rejection of claim 3, 7, and 18. Nelson clearly fails to teach, suggest, mention or contemplate reallocation of memory between FDI blocks and DAV space. The Examiner is further directed to guidance from the MPEP:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697.

See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated "'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation....The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies."

Thus, for all the reasons states above, the Applicant respectfully believes Claims 1-2, 5-6 and 8-17 overcome the rejection under 35 U.S.C. § 102(e) as being anticipated by Nelson. Furthermore, the Applicant respectfully believes Claims 3-4, 7, and 18 overcome the rejections under 35 U.S.C. 103(a) as being unpatentable over Nelson.

Further the applicant has added Claim 19 which further recites the reallocation of non-removable memory within multiple portable communication devices. Support for this claim can be found in paragraph 13 of the specification. Note, Nelson fails to teach, suggest or contemplate transmission of an over the air signal for reallocation of memory within multiple portable communication devices.

Also, the applicant has further added Claim 20 which recites that the signal over the air is transmitted using packet data or layer 3 messaging to a specific portable communication device to enable a JAVA application to access more non-removable memory. Support for this claim can be found in paragraph 16 of the specification. Nelson fails to teach, suggest or contemplate transmission using packet data or layer 3 messaging.

**V. Conclusion**

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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